

REMARKS

Formal Matters

Claims 1-3, 5-9, 14-16, 19 and 27-31 are pending after entry of the above amendments.

Claims 4, 10-13, 17-18 and 20-26 have been canceled without prejudice to the possibility of filing one or more continuing applications directed to the subject matter recited therein.

Claims 9, 15 and 19 are currently withdrawn from consideration by the Examiner.

Claims 1-3, 5-8, 14-16 and 27-31 were examined.

Claims 1-3, 5-8 14-16 and 27-31 were rejected.

Applicants respectfully request reconsideration of the application in view of the above amendments and the remarks made herein.

No new matter has been added.

The Office Action

Request for Withdrawal of the Finality of the Office Action as Being Improper

In the Official Action dated March 9, 2010, the Examiner made the Office Action **FINAL**, noting that although this Office Action is in response to an RCE filed January 8, 2010, all claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office Action if they had been entered in the earlier application. The Examiner cited MPEP 707.07(b) as support for his conclusion to make this Office Action **FINAL**.

Applicants strongly traverse. Quoting from MPEP 707.07(b) it states: "However, it would not be proper to make final a first Office action in a continuing or substitute application >or an RCE< where that application contains material which was presented in the earlier application after final rejection or closing or prosecution but was denied entry because (A) new issues were raised that required further consideration and/or search, or (B) the issue of new matter was raised." It is respectfully submitted that situation "(A)" is exactly the situation in this case. In the Advisory Action dated November 19, 2009, the Examiner indicated that the proposed amendments would not be entered because they raise new issues that would require further consideration and/or search.

Accordingly, the Examiner is respectfully requested to withdraw the finality of the Office Action dated March 9, 2010 as being clearly in error.

Distinguishment from Deckman et al., U.S. Patent No. 5,984,867

The Examiner traversed Applicants prior remarks distinguishing Deckman et al., U.S. Patent No. 5,984,867 with the Examiner asserting that Deckman et al. shows in Figs. 5-6 that the foot plate 102 is rotatable relative to frame 22 about an axis normal to the page of Figs. 5-6 and going through element 74.

To clarify the distinction between the present invention and Deckman et al., claim 1 has been amended to clarify that the foot is rotatable relative to said first and second blade about the axis extending normal to said first lateral axis. It is respectfully submitted that the foot plate 102 of Deckman et al. is rigidly fixed to the blade 42 (see Figs. 5-6 and column 7, lines 56-60) and therefore foot plate 102 cannot rotate relative to blade 42.

Regarding independent claim 5, it is respectfully submitted that Deckman et al. does not provide a foot rotatably coupled, via a coupling, to at least one of the frame and the first and second blades, the foot having a support surface configured to engage an external surface of the patient's chest, outside of the opening, said coupling permitting rotation of said foot with respect to said at least one of the frame and first and second blades in one direction, and preventing rotation of said foot with respect to said at least one of said frame and the first and second blades in an opposite direction.

Regarding independent claim 14, it is respectfully submitted that Deckman et al. does not disclose a locking member which selectively permits and prevents rotation of said second arm and second blade relative to said elongated member.

Regarding independent claim 29, it is respectfully submitted that Deckman et al. does not disclose a coupling permitting rotation of said foot with respect to said at least one of the frame and first and second blades in one direction, and preventing rotation of said foot with respect to said at least one of said frame and the first and second blades in an opposite direction.

Claims Rejected on Ground of Nonstatutory Obviousness-Type Double Patenting

Claims 5, 27-28 and 30-31 were rejected on the ground of obviousness-type double patenting as being unpatentable over claims 1-2 and 4 of U.S. Patent No. 5, 976,171 and over claims 5-6, 8, 14-16

and 24 of U.S. Patent No. 7,288,065. The Examiner admitted that the conflicting claims are not identical, but asserted that they are not patentably distinct from each other because the current claimed invention and the patents all claim a retractor device including a ratchet mechanism, first and second arms and two blades.

Applicants respectfully traverse. It is respectfully submitted that none of claims 1-2 and 4 of U.S. Patent No. 5, 976,171 and none of claims 5-6, 8, 14-16 and 24 of U.S. Patent No. 7,288,065 recite an actuator comprising a mechanism configured to convert a rotational movement to a translational driving force, as recited in instant claim 5.

It is further respectfully submitted that none of claims 1-2 and 4 of U.S. Patent No. 5, 976,171 and none of claims 5-6, 8, 14-16 and 24 of U.S. Patent No. 7,288,065 recite a coupling permitting rotation of said foot with respect to said at least one of the frame and first and second blades in one direction, and preventing rotation of said foot with respect to said at least one of said frame and the first and second blades in an opposite direction, as recited in instant claim 5.

It is further respectfully submitted that claim 28 is not properly rejected on the ground of nonstatutory obviousness-type double patenting, as claim 28 depends from claim 14 and claim 14 has not been rejected on the ground of nonstatutory obviousness-type double patent.

It is further respectfully submitted that claims 30-31 are not properly rejected on the ground of nonstatutory obviousness-type double patenting, as claims 30-32 depend from claim 29 and claim 29 has not been rejected on the ground of nonstatutory obviousness-type double patent.

In view of the above remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 5, 27-28 and 30-31 on the ground of obviousness-type double patenting as being unpatentable over claims 1-2 and 4 of U.S. Patent No. 5, 976,171 and over claims 5-6, 8, 14-16 and 24 of U.S. Patent No. 7,288,065, as being inappropriate.

Claim Rejected Under 35 U.S.C. Section 112, Second Paragraph

Claim 1 was rejected under 35 U.S.C. Section 112, second paragraph, as being indefinite. The Examiner asserted that the phrase "an axis of movement of along said frame member" was indefinite. In response thereto, claim 1 has been amended above to change this phrase to --said first lateral axis--.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claim 1 under 35 U.S.C. Section 112, second paragraph, as being indefinite, as being inappropriate.

Claims Rejected Under 35 U.S.C. Sections 102/103 - Jensen

Claims 5-8 were rejected under 35 U.S.C. Section 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. Section 103(a) as being obvious over Jensen, U.S. Patent No. 3,572,326.

Regarding claim 5, the Examiner asserted that the hexagonal head of arm 47 can be rotated and pushed or pulled to convert a rotational movement to a translational driving force.

Applicants respectfully traverse. It is respectfully submitted that the “hexagonal head” referred to by the Examiner is a knob at the proximal end of the shaft 47, see the description of knob 52 of shaft 46 at column 4, lines 6-8, which appears to be identical to the knob at the proximal end of shaft 47. The knob can be rotated to impart rotational movements to the shaft 47 and it can be pushed or pulled linearly to translate the shaft 47. However, rotation of the knob will not cause translation of the shaft. Jensen does not disclose an actuator that converts a rotational movement to a translational driving force contrary to the Examiner’s assertion.

If the knob is rotated and pushed, as asserted by the Examiner, then the pushing motion causes the translational movement of the shaft 47. However, the rotation of the knob is not converted to a translational driving force, rather it remains a rotational force causing rotation of the shaft.

Since claims 6-8 depend from claim 5, it is respectfully submitted that claims 6-8 also patentably define over Jensen for at least the same reasons provided above with regard to claim 5.

In section 1.6, page 6 of the Office Action, the Examiner makes arguments regarding claim 14. However, claim 14 was not rejected under this ground of rejection stated in section 1 on page 4 of the Office Action. Clarification is requested.

In section 1.7, page 7 of the Office Action, the Examiner makes arguments regarding claim 16. However, claim 16 was not rejected under this ground of rejection stated in section 1 on page 4 of the Office Action. Clarification is requested.

In section 1.8, page 7 of the Office Action, the Examiner makes arguments regarding claim 29. However, claim 29 was not rejected under this ground of rejection stated in section 1 on page 4 of the Office Action. Clarification is requested.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 5-8 under 35 U.S.C. Section 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. Section 103(a) as being obvious over Jensen, U.S. Patent No. 3,572,326, as being inappropriate.

Allowable Subject Matter

Applicants wish to extend their thanks to the Examiner for the indication of allowable subject matter of claims 27-28 and 30-31.

Conclusion

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-006CON5.

Respectfully submitted,

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